

# **CHAPTER 04**

## **CONFIDENTIALITY**

### **AND**

## **INFORMATION DISCLOSURE**

**CHILDREN'S ADMINISTRATION  
INDIAN CHILD WELFARE MANUAL  
CHAPTER 04—CONFIDENTIALITY AND INFORMATION DISCLOSURE**

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**04.05 GUIDELINES REGARDING DISCLOSURE OF CONFIDENTIAL RECORDS/INFORMATION TO TRIBES**

Children's Administration (CA) conditions disclosure of confidential records, documents, or information to an authorized tribal or Indian organization representative upon:

- A. Federal or state laws that require or authorize CA, child care and placement agencies, or CA contractors to disclose confidential information; or
- B. Entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and the subject matter, that requires or authorizes CA, child care and placement agencies, or CA contractors to disclose confidential information; or
- C. Written consent, by the person who is the subject of the confidential information, authorizing CA, child care or placement agencies, or CA contractors to disclose such information; or
- D. A contractual agreement between CA and a Tribe or an Indian organization under which the Tribe or Indian organization provides Child Protective Services (CPS), Child Welfare Services (CWS), or other social services. Disclosure of confidential information is necessary for provision of services under the contract; or
- E. A written understanding between CA and a Tribe or Indian organization, whereby the Tribe or Indian organization provides CPS, CWS, or other social services, and disclosure of confidential information is necessary for provision of services.

**04.10 ACCESS TO TRIBAL AFFILIATION INFORMATION FOR ADULT INDIAN ADOPTEES**

- A. Upon application of an adopted Indian person who has reached the age of 18, the court that entered the final adoption decree must:
1. Inform the individual of the tribal affiliation, if any, of the individual's biological parents; and
  2. Provide such other information as may be necessary to protect rights flowing from the individual's tribal relationships.

25 U.S.C. 1917

- B. The CA social worker must refer an adopted Indian individual of at least age 18 who requests the name of the court which entered the final adoption decree, to the Adoption Program Manager in the CA Division of Program and Policy Development in Olympia for that information, if available.
- C. The CA social worker or Adoption Program Manager must also refer such adopted Indian individuals to Tribes or Indian organizations who assist adopted Indian individuals in obtaining access to court records.
- D. If the adopted Indian individual was adopted through CA or an agency licensed or certified by CA, the CA social worker or private agency staff, as applicable, also must:
1. Search the agency files; and
  2. Advise the adopted Indian individual as to the name and location of any Tribe or band mentioned in the agency files.

**04.15 ACCESS TO TRIBAL MEMBERSHIP BY ADULT INDIAN ADOPTEE**

- A. The CA social worker or licensed or certified agency, as applicable, must advise adopted Indian individuals over the age of 18, the adoptive or foster parents of an Indian child, or an Indian Tribe of the provisions of 25 U.S.C. 1951, when approached by such parties.
- B. Upon the request of an adopted individual over the age of 18, the adoptive or foster parents of an Indian child, or an Indian Tribe, the Secretary of the Interior must disclose such information as may be necessary for enrollment as a tribal member or for determining any rights associated with that membership.

**04.20 APPLICATION OF DISCLOSURE GUIDELINES**

- A. The CA social worker or licensed or certified agency staff must disclose information regarding a Federally Recognized Indian Child or a Canadian First Nations child or Recognized Indian child as required or authorized by the provisions of this manual.
- B. Whether CA or the child care or placing agency may disclose particular information to a tribal or Indian organization representative in an individual case will depend upon the following variables:
  - 1. The child's tribal membership status (actual or potential);
  - 2. The nature of the information to be disclosed;
  - 3. The legal status of the case; i. e., pending state or tribal court action; and
  - 4. The purpose of the disclosure.

- C. Unless a court of competent jurisdiction has permanently terminated parental rights, the CA social worker needs to attempt to obtain written consent to disclosure from the child's parents.
  - 1. The CA social worker must not reveal the identity of confidential Child Protection Service (CPS) referrers without the referrer's permission.
  - 2. The CA social worker discloses information regarding a person's HIV/AIDS status only in accordance with the *CA Operations Manual*, chapter 5000, section 5723(F).
- D. If the court has terminated parental rights or if the social worker is unable to obtain parental consent to disclose, the general guidelines below regarding disclosure of confidential information must apply. Although the guidelines are not all inclusive, the most common circumstances where the department may disclose information include:
  - 1. The CA social worker or licensed or certified agency staff may disclose identifying information regarding a child who may be Indian and the child's family for purposes related to verification of the child's Indian status, determination of tribal wardship status, and determination of the child's residence and domicile.
  - 2. The CA social worker or licensed or certified agency staff must disclose information regarding a child who is a member of or eligible for membership in a federally recognized Tribe to that Tribe for purposes related to child welfare case planning upon the Tribe's request.
  - 3. The CA social worker or licensed or certified agency staff must disclose information regarding the child to the child's Tribe if the Tribe has intervened or upon request of the Tribe in the following circumstances:
    - a. The proceeding involves a child who is a member of or eligible for membership in a federally recognized Indian Tribe; and



- b. The state or tribal court proceeding pertains to voluntary foster care placement, dependency, guardianship, termination of parental rights, Child in Need of Services (CHINS) or At-Risk Youth (ARY) petitions, or relinquishment/adoption.
- 4. The CA social worker or licensed or certified agency staff must send case record information to the Tribe by certified mail, return receipt requested, within five working days of receipt of the Tribe's request.
- E. The CA social worker or licensed or certified agency staff must disclose information regarding the child to an intervening Canadian Tribe/Band or a federally/non-federally recognized Indian Tribe if the Tribe/Band intervenes as a party in a state court proceeding involving:
  - Voluntary out of home placement;
  - Dependency;
  - Child in Need of Services (CHINS) or At-Risk Youth (ARY) petitions; or
  - Relinquishment/adoption of an Canadian First Nations child or Recognized Indian Child.
- F. The CA social worker or licensed or certified agency staff may disclose information regarding a Federally Recognized Indian Child or an recognized Indian Child for case planning and/or consultation purposes to the child's Tribe/Band, involved Indian organizations, social service agencies, or other service resources.
- G. The CA social worker or licensed or certified agency staff must disclose information regarding a child of Indian ancestry to the appropriate LICWAC for case planning purposes and staffings conducted in accordance with Chapter 10, section 10.20(K), of this manual.
- H. For disclosure requirements to prospective adoptive parents, see Chapter 08.

- I. The social worker must consult with the Attorney General's Office or other appropriate legal representative if questions arise regarding confidentiality or disclosure of information.

#### **04.25 LETTERS AND TELEPHONE CALLS TO TRIBES**

The CA social worker must send letters with confidential information in envelopes marked "Confidential: Indian Child Welfare." The social worker must not give identifying client information when leaving telephone messages.